

REMARKS

This Request for Reconsideration is filed in response to the non-final Office Action of September 3, 2008 in which claims 1-22 were rejected for obviousness.

Regarding the obviousness rejection, the secondary reference *Lalande* (WO 02/083591) is the international publication of International Application No. PCT/CA02/00517. Please note that the secondary reference *Lalande* (US 2004/0129181) used as a secondary reference in the prior non-final Office Action of March 17, 2008 was the U.S. national stage of the same International Application PCT/CA02/00517 that is the subject matter of International Publication No. WO 02/083591 now cited by the Examiner as the secondary reference in the obviousness rejection in the Office Action of September 3, 2008. Therefore, the same statement applies to the International Publication WO 02/083591, i.e., that at the time the present invention was made, the subject matter of the invention was owned by CO2 Solution, Inc. which also owned U.S. Patent Application Serial No. 10/474,930 constituting the International Application No. PCT/CA02/00517 constituting the secondary reference now used by the Examiner. Therefore, the “safe harbor” of 35 U.S.C. § 103(c) is operative and the secondary reference is unavailable under 35 U.S.C. § 102(e)/103(a).

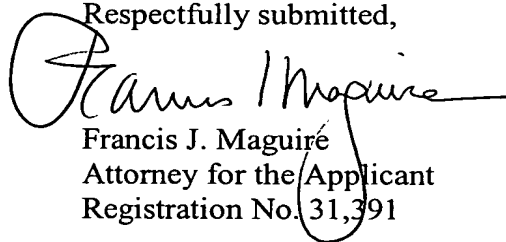
In a telephone conversation between the undersigned and the Examiner on September 9, 2008, the Examiner was not convinced that the “safe harbor” was applicable under 35 U.S.C. § 103(c) by focusing on the international publication date as creating the basis for either a § 102(b)/103(a) or a § 102(a)/103(a) rejection.

Please note, however, that the international publication date of October 24, 2002 of International Publication No. WO 02/083591 is after the Canadian priority date of September 27, 2002 (Canadian Patent Application 2,405,635) claimed for the present application under the Paris Convention as codified in 35 U.S.C. § 119. A

certified copy of the Canadian priority document was filed in the Canadian Receiving Office on October 24, 2003 in accordance with PCT Rule 17 and this fact was noticed to the International Bureau by mail on November 7, 2003 (see the enclosed Form PCT/RO/135 indicating receipt on 24 October 2003 of the priority document CA 2,405,635) and evidently sent to the IB as evidenced by the stamped date of receipt by WIPO on 12 November 2003 available on the WIPO website. Therefore, the Applicant's priority claim has been perfected. Consequently, the international publication date is not effective under either 35 U.S.C. § 102(a) or 102(b) as the foundation for any obviousness rejection. Withdrawal thereof is requested.

The objections and rejections of the Office Action of September 3, 2008, having been obviated by amendment or shown to be inapplicable, withdrawal thereof is requested and passage of claims 1-22 to issue is solicited.

Respectfully submitted,



Francis J. Maguire
Attorney for the Applicant
Registration No. 31,391

FJM/mo
WARE, FRESSOLA, VAN DER SLUYS
& ADOLPHSON LLP
755 Main Street, P.O. Box 224
Monroe, Connecticut 06468
(203) 261-1234

PATENT COOPERATION TREATY

the RECEIVING OFFICE

To:

The International Bureau of WIPO
34, chemin des Colombettes
1211 Geneva 20
Switzerland

FRANCOIS

RAP 27/3

PCT

NOTIFICATION OF DATE OF RECEIPT OF PRIORITY DOCUMENT OR OF PRIORITY APPLICATION NUMBER

(PCT Administrative Instructions,
Section 323(a), (b) and (c))

Applicant's or agent's file reference 000677-0036	Date of mailing (day/month/year) 07 November 2003 (07-11-2003)
International application No. PCT/CA03/01496	International filing date (day/month/year) 29 September 2003 (29-09-2003)
Applicant CO2 SOLUTION INC. ET AL	

1. ☒ This receiving Office hereby gives notice of the receipt of the priority document(s) identified below on:
- 24 October 2003 (24.10.03)
2. ☐ This receiving Office hereby gives notice of the receipt of a request (made under Rule 17.1(b)) to prepare and transmit to the International Bureau the priority document(s) identified below on:

Identification of the priority document(s):

Priority date	Priority application No.	Country or regional Office or PCT receiving Office
27 September 2002 (27-09-2002)	2,405,635	CA

Name and mailing address of the receiving Office Commissioner of Patents Canadian Receiving Office Box PCT, Ottawa/Gatineau K1A 0C9 Facsimile No. (819) 953-9538	Authorized Officer <p style="text-align: center;">Raymond Sabourin (819) 953-4415</p>
--	--